



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
999 18TH STREET - SUITE 300
DENVER, CO 80202-2466
<http://www.epa.gov/region08>

SEP 22 2005

CERTIFIED MAIL #7004 1350 0001 5668 3137
RETURN RECEIPT REQUESTED

Ref: 8ENF-L

Scott Pettro
Petro Properties, L.L.C.
515 Hayley Court
Alpine, UT 84004

Re: Findings of Violation and
Administrative Order for Compliance
Docket No. CWA-08-2005-0054

Dear Mr. Pettro:

Based on our review of all available information, the United States Environmental Protection Agency (EPA) has determined that you are in violation of the Clean Water Act, as amended (CWA). The CWA requires that an authorizing permit be obtained from the United States Army Corps of Engineers prior to the discharge of pollutants (i.e., dredged or fill material) into waters of the United States. See, 33 U.S.C. § 1311. Waters of the United States include both surface waters and wetlands as defined by 33 C.F.R. § 328.3.

Specifically, you have discharged dredged and fill material into waters of the United States without authorization under the CWA and have failed to perform mitigation required by a permit issued by the U.S. Army Corps of Engineers. The discharges of pollutants into streams and wetlands occurred at a site located at 1005 East 1860 South in Provo, Utah, and the mitigation required by the permit was to be performed in the same location.

Enclosed is an EPA Region 8 administrative order which specifies the nature of the violations and describes actions necessary in order for you to achieve compliance with the CWA. EPA's authority for such action is provided under section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3). The order requires you to inform EPA in writing, within five days of receipt, of your intent to fully comply with the order.

The CWA requires the Administrator of EPA to take all appropriate enforcement action necessary to secure prompt compliance with the CWA and any order issued thereunder. Section 309 of the CWA authorizes a variety of possible enforcement actions, including filing of a civil



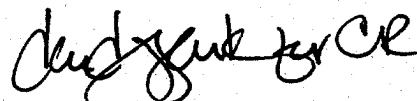
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or criminal action, administrative penalty action, and/or debarment from Federal contracts and/or loans for any noncompliance with the CWA or an order issued pursuant to the CWA. Please be advised that the issuance of this order does not preclude civil or criminal actions in the U.S. District Court pursuant to sections 309(b) or (c) of the CWA, 33 U.S.C. §§ 1319(b) or (c), or assessment of civil penalties pursuant to sections 309(d) or (g) of the CWA, 33 U.S.C. §§ 1319(d) or (g), for the violations cited in the order.

EPA has agreed to notify small businesses of their right to comment on regulatory enforcement activities at the time of an Agency enforcement activity pursuant to the Small Business Regulatory Enforcement and Fairness Act (SBREFA). SBREFA does not eliminate your responsibility to comply with the CWA or this order, nor does it create any new rights or defenses under law. We have enclosed a SBREFA information sheet containing further information on compliance assistance resources and tools available to small businesses.

Please review the order carefully. If you have any questions, the most knowledgeable people on my staff are Wendy Silver, Enforcement Attorney, at 303-312-6637 and Monica Heimdal, Environmental Engineer, at 303-312-6953.

Sincerely,



Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Enclosures

1. Findings of Violation and Administrative Order for Compliance
2. SBREFA Information Sheet

cc: Tina Artemis, EPA, Regional Hearing Clerk, w/enclosures
Amy S. Defreese, U.S. Army Corps of Engineers
Craig D. Galli, Holland & Hart (certified mail)
Bill Moellmer, State of Utah Department of Environmental Quality
Shawn Zinszer, U.S. Army Corps of Engineers

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

2005 SEP 19 AM 10:41

IN THE MATTER OF:

**Pettro Properties, LLC
515 Hayley Court
Alpine, UT 84004**

Respondent.

FILED
EPA REGION VIII
HEARING CLERK

**FINDINGS OF VIOLATION AND
ADMINISTRATIVE ORDER FOR
COMPLIANCE**

Docket No. CWA-08-2005-0054

I. STATUTORY AUTHORITY

This Findings of Violation and Administrative Order for Compliance ("Order") is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by section 309 of the Clean Water Act ("CWA"), 33 U.S.C. § 1319. This authority has been properly delegated to the Assistant Regional Administrator of the Office of Enforcement, Compliance and Environmental Justice, EPA Region 8. The Order is based on the findings of violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a), which, among other things, prohibits the discharge of pollutants into waters of the United States except as in compliance with section 404 of the CWA, 33 U.S.C. § 1344.

II. FINDINGS OF VIOLATION

1. Pettro Properties, LLC ("Respondent"), is, or was at all relevant times, a Nevada corporation engaged in real estate development with offices located at 515 Hayley Court, Alpine, Utah.
2. At all relevant times, Respondent owned, controlled, and/or operated property containing wetlands in certain areas. Said property and wetlands are located at 1005 East 1860

South in Provo, Utah, and are also referred to as the Petro Spectrum Site (the "Site").

The Site is composed of the South Parcel and the North Parcel.

3. In 2000, Pentacore EPG performed a delineation of wetlands on the South Parcel. On September 1, 2000, the U.S. Army Corps of Engineers ("Corps") verified the delineation identifying approximately 8.45 acres of waters of the United States, including wetlands, within the surveyed area.
4. On February 9, 2001, Pentacore EPG, on behalf of Respondent, applied to the Corps for an individual permit to fill 1.17 acres of wetlands on the South Parcel.
5. On June 18, 2001, the Corps issued a permit to Scott Petro, Petro Properties, to fill 1.17 acres of wetlands on the South Parcel. The permit required, among other things, creation of 0.67 acres of wetlands on the South Parcel and placement of deed restrictions on the remaining 5.45 acres of wetlands on the South Parcel. These requirements were never fulfilled by Respondent and are violations of the permit.
6. In or around November of 2001, Pentacore EPG collected field data for a wetland delineation on the North Parcel; the delineation is dated January 17, 2002. Pentacore EPG identified 8.95 acres of waters of the United States, including wetlands, within the surveyed area. This delineation was never submitted to the Corps for verification.
7. Beginning in November of 2002, Respondent commenced site preparation work, including the placement of fill into the permitted 1.17 acres of wetlands on the South Parcel.
8. Respondent further discharged dredged or fill material into approximately 9.39 acres of wetlands: approximately 2.19 acres on the South Parcel and 7.2 acres on the North

Parcel. Respondent had neither applied for nor received a permit to discharge into said wetlands and has not been authorized by any permit issued under section 404 of the CWA, 33 U.S.C. § 1344, to allow the unauthorized discharges to remain.

9. On April 4, 2003, the Corps sent a letter to Respondent notifying it that unauthorized discharges of dredged and fill material into approximately 9 acres of wetlands had occurred at the Site.
10. The adverse impacts of the Respondent's unauthorized discharges of dredged or fill material are presumed to be avoidable, at least to some degree, in terms of the "Practicable Alternatives" analysis set forth in the Section 404(b)(1) Guidelines, 40 C.F.R. § 230.10(a), and required by CWA Section 404(b)(1), 33 U.S.C. § 1344(b)(1).
11. The wetlands filled and disturbed by the unauthorized activities, as well as the surrounding areas, provided various functions and values including water quality enhancement; flood-flow attenuation; groundwater recharge and discharge; habitat for birds, mammals, reptiles, amphibians, and other wildlife; and aesthetics.
12. The activities described in paragraphs 7 and 8 of Section II of this Order were performed using common earthmoving equipment, which was operated by Respondent or by somebody on behalf of Respondent.
13. Respondent is, and was at all relevant times, a "person" within the meaning of section 502(5) of the CWA, 33 U.S.C. § 1362(5).
14. The discharged dredged and fill material referenced in paragraphs 7 and 8 of Section II of this Order is, and was at all relevant times, "dredged material" and "fill material" within

- the meaning of 33 C.F.R. § 323.2(c) and 33 C.F.R. § 323.2(e), respectively, and “pollutants” within the meaning of section 502(6) of the CWA, 33 U.S.C. § 1362(6).
15. The equipment described in paragraph 12 of Section II of this Order is, and was at all relevant times, a “point source” within the meaning of section 502(14) of the CWA, 33 U.S.C. § 1362(14).
 16. The wetlands referenced in paragraphs 7 and 8 of Section II of this Order were at all relevant times tributary to Utah Lake; all are “waters of the United States” within the meaning of 33 C.F.R. § 328.3(a) and therefore “navigable waters” within the meaning of section 502(7) of the CWA, 33 U.S.C. § 1362(7).
 17. The placement of dredged or fill material into the wetlands constitutes the “discharge of pollutants” within the meaning of section 502(12) of the CWA, 33 U.S.C. § 1362(12).
 18. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits, among other things, the discharge of pollutants by any person into waters of the United States except as in compliance with section 404 of the CWA, 33 U.S.C. § 1344.
 19. Section 404 of the CWA, 33 U.S.C. § 1344, sets forth a permitting system authorizing the Secretary of the Army, acting through the Chief of Engineers of the Corps, to issue permits for the discharge of dredged or fill material into navigable waters, which are defined as waters of the United States.
 20. 33 C.F.R. § 323.3(a) specifies that, unless exempted pursuant to 33 C.F.R. § 323.4, a permit issued by the Corps is required for the discharge of dredged or fill material into waters of the United States.

21. Respondent is not and never has been authorized by a permit issued pursuant to section 404 of the CWA, 33 U.S.C. § 1344, to conduct the activities described in paragraph 8 of Section II of this Order.
22. Respondent's activities described in paragraph 8 of Section II of this Order, without such a Section 404 permit, constitute violations of section 301(a) of the CWA, 33 U.S.C. § 1311(a). Each day the discharged dredged or fill material remains in place without the required permits constitutes an additional day of violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a).
23. Respondent's failure to comply with the requirements set forth in the permit issued by the Corps on June 18, 2001, as described in paragraph 5 of Section II of this Order, constitutes violations of the permit and, therefore, violations of section 404 of the CWA, 33 U.S.C. § 1344.
24. Mitigation for the adverse impacts to, and the loss of the functions and values of, waters of the United States on the Site can be achieved as a practical matter through commonly used methods of construction, digging, revegetation, and best management practices. Mitigation is appropriate to address the actual and potential harm to water quality, aquatic habitat, and wildlife habitat, as well as other functions and values, caused by Respondent's unpermitted activities and permit violations.
25. Activities to be carried out under this Order are remedial, not punitive, and are necessary to achieve the CWA's objective "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters," as specified in section 101(a) of the CWA, 33 U.S.C. § 1251(a).

26. This Order was issued after consultation and coordination with the Corps' Sacramento District.

III. ORDER

Based upon the foregoing FINDINGS OF VIOLATION, and pursuant to the authority vested in the Administrator of EPA pursuant to sections 308 and 309(a) of the CWA, 33 U.S.C. §§ 1318 and 1319(a), as properly delegated to the Assistant Regional Administrator of the Office of Enforcement, Compliance and Environmental Justice, EPA Region 8, it is hereby ORDERED:

1. Respondent shall immediately terminate all unauthorized discharges of dredged or fill material, now and in the future, into waters of the United States, unless specifically authorized by the Corps under a valid permit issued pursuant to section 404 of the CWA, 33 U.S.C. § 1344. This prohibition includes all mechanical land clearing, dredging, filling, grading, leveling, installation of utilities, construction, and any other activities that result in a discharge of dredged or fill material into waters of the United States.
2. Respondent shall conduct mitigation activities, as more fully described below, for impacts to waters of the United States resulting from the unauthorized discharges of dredged or fill material at the Site and the failure to comply with the mitigation requirements set forth in the permit issued by the Corps on June 18, 2001.
3. Within five (5) calendar days of receipt of this Order, Respondent shall inform EPA in writing of Respondent's intent to fully comply with the Order. EPA requests that Respondent meet with EPA within fourteen (14) calendar days of issuance of this Order if Respondent has concerns or questions about the requirements of the Order. The scheduling of such a meeting shall not alter Respondent's responsibility to meet any of

the deadlines specified in this Order unless otherwise clearly stated in a written communication to Respondent by EPA.

4. All mitigation activities shall be conducted in accordance with an EPA-approved mitigation plan prepared by a consultant experienced in wetland and stream mitigation. The consultant also shall directly supervise all work performed pursuant to the EPA-approved mitigation plan. A statement of the consultant's qualifications, including professional resume and business references, shall be submitted to EPA within twenty-one (21) calendar days of receipt of this Order.
5. All mitigation activities conducted pursuant to this Order and involving the use of heavy construction equipment shall be undertaken by an equipment operator experienced in wetland and stream mitigation. A statement of the equipment operator's qualifications, including professional resume and business references, shall be submitted to EPA within twenty-one (21) calendar days of receipt of this Order.
6. Within forty-five (45) calendar days of receipt of this Order, Respondent shall submit to EPA for review, comment, and approval a mitigation plan, prepared by the consultant referenced in paragraph 4 of Section III of this Order, for mitigation of the impacts to waters of the United States due to: 1) the unauthorized discharges of dredged or fill material at the Site and 2) the failure to mitigate for authorized fill at the Site as required by the permit issued by the Corps on June 18, 2001. The activities and acreages of impacts, as well as the related mitigation requirements, are summarized in Exhibit A.
7. The mitigation plan shall be prepared in accordance with guidelines entitled "U.S. Environmental Protection Agency, Region 8 Clean Water Act § 404 Enforcement:

Removal/Restoration Plans and Habitat Mitigation/Monitoring Proposals,” attached

hereto as Exhibit B. In addition, the mitigation plan shall include:

- a. A detailed work plan and schedule for all of the work and activities to be accomplished by the mitigation plan, including the application for any required permits, providing for completion of all aspects of the mitigation work, except for any long-term monitoring, no later than sixty (60) days after EPA approves the mitigation plan;
 - b. Locations and delineations of all wetlands and other waters of the United States included in the mitigation. The delineations shall be performed in accordance with the procedures in the “Corps of Engineers Wetlands Delineation Manual, January 1987 - Final Report,” including the procedures for atypical situations, and subsequent interpretive guidance published by the Corps; and
 - c. A description of all costs to complete the mitigation work, including the costs of all consultations, permits, construction, monitoring, land acquisition, etc.
8. EPA will review the mitigation plan and approve it, approve it with modifications, or reject it with comments. If EPA rejects the mitigation plan, Respondent shall, within fifteen (15) calendar days of receipt of EPA’s rejection letter, submit a revised plan that corrects the deficiencies identified by EPA.
9. Upon receiving EPA’s written approval of the mitigation plan, Respondent shall obtain all necessary permits to implement the EPA-approved plan and then commence mitigation activities in accordance with the approved plan, including the time frames specified therein, and all granted permits. Respondent shall demonstrate that all

necessary permits have been granted by providing complete copies of all such permits, and any amendments thereto, to EPA within seven (7) calendar days of issuance of each permit.

10. This Order is not a permit or an authorization to place or discharge dredged or fill material in waters of the United States. Respondent shall consult with the Corps at the address and telephone number below to determine if any work to be performed pursuant to this Order requires a permit from the Corps under section 404 of the CWA. If required, Respondent shall obtain such permit(s) and provide a copy to EPA pursuant to paragraph 9 of Section III of this Order prior to initiating any work that is to be performed pursuant to this Order.

U.S. Army Corps of Engineers
Utah Regulatory Office
533 West 2600 South, Suite 150
Bountiful, UT 84010
Telephone: 801-295-8380

11. Respondent shall submit three (3) copies of the mitigation plan, all notifications, and related correspondence to:

Monica Heimdal, 8ENF-W
U.S. Environmental Protection Agency, Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466
Telephone: 303-312-6359
Facsimile: 303-312-6409

A copy of the mitigation plan, all notifications, and related correspondence also shall be provided to:

Wendy Silver, 8ENF-L
Enforcement Attorney
U.S. Environmental Protection Agency, Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466
Telephone: 303-312-6637
Facsimile: 303-312-6953

12. All plans (including, but not limited to, the mitigation plan), deliverables, reports, specifications, schedules, and attachments required by this Order are, upon approval by EPA, incorporated into this Order. Any non-compliance with such EPA-approved plans, deliverables, reports, specifications, schedules, or attachments shall be deemed a failure to comply with this Order and subject to EPA enforcement.
13. Respondent shall allow, or use Respondent's best efforts to allow, access by any authorized representatives of EPA or its contractors, the Corps, the U.S. Fish and Wildlife Service, the Utah Division of Wildlife Resources, the Natural Resources Conservation Service, and the Utah Department of Environmental Quality, upon proper presentation of credentials, to sites and records relevant to this Order for any of the following purposes:
 - a. To inspect and monitor progress of the activities required by this Order;
 - b. To inspect and monitor compliance with this Order; and
 - c. To verify and evaluate data and other information submitted to EPA.
14. This Order shall in no way limit or otherwise affect EPA's authority, or the authority of any other governmental agency, to enter the site, conduct inspections, have access to records, issue notices and orders for enforcement, compliance, or abatement purposes, or monitor compliance pursuant to any statute, regulation, permit, or court order.
15. This Order shall be effective upon receipt by Respondent.

16. Please be advised that section 309(d) of the CWA, 33 U.S.C. § 1319(d), authorizes civil penalties of up to \$27,500 per day for each violation that occurred before March 15, 2004, and \$32,500 per day for each violation thereafter of section 301 of the CWA, 33 U.S.C. § 1311, and for each violation of an order issued by the Administrator of EPA under section 309(a) of the CWA, 33 U.S.C. § 1319(a). Additionally, section 309(g) of the CWA, 33 U.S.C. § 1319(g), authorizes EPA to impose administrative penalties for violations of the CWA. Further, section 309(c) of the CWA, 33 U.S.C. § 1319(c), authorizes fines and imprisonment for willful or negligent violations of the CWA. Issuance of this Order shall not be deemed to be an election by the United States to forego any civil or criminal action to seek penalties, fines, or other appropriate relief under the CWA for violations giving rise to the Order.
17. Compliance with the terms and conditions of the Order shall not be construed to relieve Respondent of Respondent's obligation to comply with any applicable Federal, state, or local law or regulation. Failure by Respondent to complete the tasks described herein in the manner and time frame specified pursuant to this Order may subject Respondent to a civil action under section 309 of the CWA, 33 U.S.C. § 1319, for violation of this Order.

DATED this 16th day of September, 2005.

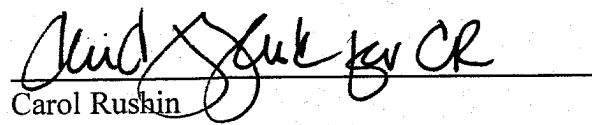

Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

EXHIBIT A

Activity	Acreage	Authorized	Mitigation Ratio	Required Mitigation Acreage
Fill on Northern Parcel	7.20	No	3:1	21.60
Fill on Southern Parcel (topsoil stockpile on eastern portion of property)	1.83	No	3:1	5.49
Fill on Southern Parcel (widened road)	0.36	No	3:1	1.86
Fill on Southern Parcel (road)	0.16	Yes	2:1	0.32
Mitigation on Southern Parcel, as required by permit, not performed	4.83	No	1:1	4.83*
TOTAL	14.38			34.10

* Restore hydrology on site, add conservation easement

EXHIBIT B

U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 8

**CLEAN WATER ACT § 404 ENFORCEMENT:
REMOVAL/RESTORATION PLANS
AND HABITAT MITIGATION/MONITORING PROPOSALS**

INTRODUCTION

These guidelines are designed to assist respondents in the preparation of (1) removal and restoration plans and (2) habitat mitigation and monitoring plans associated with projects required under EPA administrative orders. They have been developed from the experiences of many cases and are intended to be merely guidelines. In the event of a conflict between an administrative order and these guidelines, the administrative order controls.

For answers to questions regarding the interpretation of these guidelines or of acceptable restoration and mitigation for a specific project, please contact the person at EPA Region 8 in the Technical Enforcement Program who is handling the case.